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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/827,024	04/05/2001	Angelo Gencarelli	NIS 3841	3798

7590 05/22/2003
Louis J. Brunoforte
217 Harbor View Lane
Largo, FL 33770

EXAMINER

WALTON, GEORGE L

ART UNIT PAPER NUMBER

3753

DATE MAILED: 05/22/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding:

Office Action Summary

Application No.
09/827,024

Applicant(s)
Gencarelli

Examiner
George L. Walton

Art Unit
3753



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5 6) ☐ Other:

Art Unit: 3753

DETAILED ACTION

Reissue Applications

Defective Oath

The reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414. Note that the original claims 1-3 as issued in the prior patent have no errors and are not the claims in question. These claims can be the only claims that warrant the instant reissue application. The claims in question are the non-elected claims 4-7 of the prior patent. Therefore, the oath is defective for that reason.

The reissue oath/declaration filed with this application is defective because the error which is relied upon to support the reissue application is not an error upon which a reissue can be based. See 37 CFR 1.175(a)(1) and MPEP § 1414. This reissue cannot be based on the applicant's failure to timely file a divisional application. Such is not considered to be an error causing a patent granted on elected claims to be partially inoperative by reason of claiming less than the applicant had a right to claim. Therefore, such error is not correctable by a reissue. See MPEP, section 1450. *In re Watkinson*, 900 F.2d 230, 14 USPQ2d 1407 (Fed. Cir. 1990); *In re Orita*, 550 F.2d 1277, 1280, 193 USPQ 145, 148 (CCPA 1977). See also, *In re Mead*, 581 F.2d 251, 198 USPQ 412 (CCPA 1978). You are not allowed to add the previous non-elected claims 4-7 that was canceled in the prior patent

Art Unit: 3753

in this reissue application. The canceled claims 4-7 were part of the restriction requirement made in the prior patent (Serial No.09/058,930).

Claims 1-7 are rejected as being based upon a defective reissue oath under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175. The nature of the defect(s) in the oath is set forth in the discussion above in this office action.

In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed.

Claims 1-7 are rejected as being based upon a defective oath under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is set forth above. Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

"Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."

The amendment submitted on March 27, 2003 is not in compliance with 37 CFR section 1.173(b). Therefore, such amendment will not be entered and considered.

The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

Conclusion


Art Unit: 3753

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is cited on the PTO-1449.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George L. Walton whose telephone number is (703) 308-2596. Upon receipt of this action, the applicant and/or attorney is invited to contact the examiner to discuss the above action. My normal business hours are between 8:30 AM to 5:00 PM. Should any attempt after one business day to reach the examiner by telephone is unsuccessful, you may contact the supervisor, Mr. Michael Buiz on (703) 308-0871. My fax number is (703) 308-7765.

Any inquiry of a general nature or relating to the status of this application and any pre-examination proceedings on this application should be directed to the receptionist whose telephone number is (703) 308-0861.

GLW
May 08, 2003


GEORGE L. WALTON
PRIMARY PATENT EXAMINER
TECHNOLOGY CENTER - 3700
ART UNIT - 3753